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9 **UNITED STATES BANKRUPTCY COURT**
NIORTHERN DISTRICT OF CALIFORNIA

10 In re:
11 David R. Foley
12
13 Debtor(s).
14) Case No. 18-52539 MEH
15) Chapter 13
16) OPPOSITION TO MOTION FOR REVIEW
17) AND DISGORGEMENT OF ATTORNEY'S
18) FEES
19) Hearing Date: January 25, 2019
20) Hearing Time: 10:00 a.m.
21) Judge: Hon. M. Elaine Hammond
22) Place: 280 S. First Street, Courtroom
23) 3020
24) San Jose, CA 95113
25)
26)
27)

28 COMES NOW, David R. Foley (the "Debtor"), through his counsel, Nancy Weng, of the
FARSAD LAW OFFICE, P.C., and hereby opposes the Chapter 13 Trustee's Motion for Review
and Disgorgement of Attorney's Fees. This Opposition is supported by the Declaration of Nancy
Weng and the Debtor, David R. Foley.

29 **I. INTRODUCTION**

30 On or about November 13, 2018, Debtor retained the Farsad Law Office, P.C. (the
31 "Firm") to file an emergency Chapter 13 to stop the non-judicial foreclosure sale of his residence
32 located at 311 Santa Rosa Drive, Los Gatos, CA 95032 (the "Property").¹

28 ¹ Although the petition was filed on November 14, 2018 under Nancy Weng of Tsao-Wu & Yee, LLP, this was in
error from the Best-Case Program. A Change of Address Form was filed the same day of the "skeletal petition"

1 The Debtor has approximately \$700,000 in equity in the Property. The Debtor's goal in
2 filing for bankruptcy protection was to reinstate the loan with funding prior to foreclosure; to do
3 so, Debtor needed time. The Firm filed an emergency skeletal petition in order to stop the
4 foreclosure sale. Counsel stayed in the office with the Debtor until 9 p.m. to prepare the skeletal
5 filing (as he contacted the Firm in the afternoon on the day prior to the scheduled foreclosure
6 sale) to prevent foreclosure of his Property.

7 At the time of the emergency filing, the exact amounts owed by the Debtor were
8 unknown. It was not until the filing of the balance of the schedules (after receipt of all of the
9 Debtor's financials) on December 10, 2018, that it was revealed that the Debtor actually owed a
10 balance on the Property over 109(e) limits. At this time, counsel discussed with the Debtor the
11 109(e) problem and possible conversion of the case to one under Chapter 11 as the Debtor would
12 not be able to continue with the Chapter 13. Debtor's counsel discussed reinstatement of the
13 subject delinquent first mortgage loan in lieu of the Chapter 11 as well.

14 **II. HISTORY OF THE CASE AND THE DEBTOR'S HARDSHIP THAT
15 CAUSED THE INSTANT FILING**

16 The Debtor's income is derived from a company named NanoTech ("NTEK") which
17 turns old videos/movies into current technology 4D. When the Debtor started with NTEK in
18 2017, NTEK was close to obtaining necessary funding in April 2017 after it signed a deal with
19 Bridgeport, an investment firm. Unfortunately, Bridgeport suffered several delays in obtaining
20 funding. Due to these delays, the Debtor has been unable to cash his paychecks from NTEK.
21 NTEK currently owes Debtor \$530,000 in back pay as well as a significant amount of monies for
22 costs and expenses Debtor incurred.

23 In addition, the Debtor has several million options and shares of NTEK stock that he has
24 been unable to sell due to several issues arising from NTEK's failure to procure funding in a
25 timely manner. The Debtor had originally planned on \$35,000 in monthly income from the
26 liquidation of his shares, but has not been able to sell any shares since 2017. NTEK has sought
27

28 under Docket No. #6. The case was filed under Nancy Weng, but of Farsad Law Office, P.C., and not Tsao-Wu &
Yee, LLP, counsel's previous firm (See #16 of the Statement of Financial Affairs filed on December 10, 2018 under
Docket No. #21).

1 alternative investors/funding as they can no longer rely on Bridgeport. Bridgeport continues to
2 claim that they are only days away from being funded. However, due to the long delays, the
3 Debtor is seeking funding from an alternative source: The Bank of Rome. The bank initially
4 accepted the deal, but required some time to perform its due diligence by conducting audits of
5 NTEK to affirm valuation. Debtor has been informed that The Bank of Rome anticipates that
6 they will have closing documents to sign by January 31, 2019. The Debtor will either reinstate
7 his loan in full or will convert the instant case to one under Chapter 11 if neither Bridgeport or
The Bank of Rome closes the deal with NTEK.

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9 **III. ARGUMENT**

10 **a. THE DEBTOR RECEIVED THE REASONABLE VALUE OF SERVICES
11 PURSUANT TO 11 U.S.C. §329 AND THE SERVICES BENEFITING THE
DEBTOR'S ESTATE**

12 11. U.S.C. § 329 provides, in pertinent part, that “if a [a debtor’s attorney’s]
13 compensation exceeds the reasonable value of [the services provided], the court may.....order the
14 return of any such payment, to the extent excessive....”

15 Here, the Debtor came into the firm’s office on the eve of foreclosure. Had his Property
16 been foreclosed, the Debtor would have lost his Property as well as \$700,000 in equity. The
17 auction was alive and well-set for 9:00 a.m. the following day. Counsel stayed late in the office
18 until 9 p.m. to ensure that the skeletal filing would be prepared to be filed at 8:00 a.m. the next
19 morning. The Debtor paid the firm \$2,155 (less than the entire no-look fee schedule in San
20 Jose). Given that the Debtor received the benefit of saving his Property from foreclosure with
21 his good faith intentions to reinstate his loan, the Debtor received more than reasonable value of
22 the services provided. Counsel’s normal billing rate is \$300.00. The hours spent on this case
thus far is:

Date	Event	Hours	Total
11/13/2018	Consult/skeletal petition preparation	1	300
11/28/18	Draft ex parte motion to extend time to file balance of schedules	.3	90

1	11/30/2018	Review title report through third company for amount owed - \$60 cost	1.2	360
2	12/09/2018	Review proof of claims filed	.3	90
3	12/10/2018	Draft balance of schedules	1.5	450
4	12/10/2018	Review and sign with Debtor balance of schedules	2	600
5	12/18/2018	Meet with Debtor regarding conversion	1	300
6	12/28/2018	Review Trustee's Disgorgement Motion	.5	150
7	1/7/2019	Respond to Trustee's Motion to Disgorge and declarations	3	900
8	Total		10.8	3,240

The Debtor has received reasonable value of services. By filing the bankruptcy petition, the Debtor stayed a foreclosure sale and prevented the loss of hundreds of thousands of dollars worth of equity in foreclosure. The bankruptcy is giving the Debtor time to either reinstate his loan and become current, or convert to Chapter 11. Counsel has worked diligently with the Debtor to discuss his options to save his Property. At present, if charging by the regular rate, the Debtor would have spent \$3,240.00 Instead, the Debtor has only paid \$2,155.00 Therefore, the Debtor has received the reasonable value of services for which he paid and disgorgement is inappropriate and unwarranted.

1 The Trustee's Application for Disgorgement cites *Hale v. United States Trustee (In re*
2 *Basham)*, 208 B.R. 926, 931 (9th Cir. B.A.P. 1997) as setting forth the standard by which a court
3 should determine reasonableness of fees and in support of the Trustee's Application. However,
4 the facts in *Hale* are completely inapposite to the instant facts in this case. The only service
5 attorney Hale provided to Debtors was completion of a Chapter 7 bankruptcy petition (not a
6 Chapter 13) that was incomplete and erroneous and requiring extensive amendments. The *Hale*
7 attorney also had the Debtors file Pro Per in their case. Hale failed to inform Debtors about the
8 bankruptcy process, obtain their informed consent to his limited representation, or notify them
9 about the impending meeting of creditors (or provide any other necessary information to the
10 Debtors, for that matter). Instead, Hale attempted to persuade them to dismiss their petition
11 without explaining why or how it would affect their rights. Debtors ultimately paid \$1000.00 to
12 correct and supplement the work that Hale performed. The bankruptcy court did not abuse its
13 discretion in disgorging Hale of his attorney fees.

14 None of the facts in *Hale* apply to this case. Counsel submitted the petition to the Court
15 for the Debtor as an emergency filing on the eve of foreclosure. Because of the complex nature
16 of the Debtor's case and in order to perform due diligence, Counsel obtained an Order to Extend
17 Time to file the balance of the schedules in order to:

- 18 1) obtain more information and review Debtor's financials in detail;
- 19 2) contact the IRS/FTB to obtain tax transcripts;
- 20 3) run its own preliminary title report for the Debtor's Property and paid \$60 out of
21 pocket to determine the amount of the claims and research the possibility of other
22 liens;
- 23 4) file the balance of the petition; and
- 24 5) have a lengthy meeting with the Debtor to explain the different chapters of
25 bankruptcy and options available to the Debtor. (e.g., Counsel explained a "worst
26 case scenario" of a "sale" plan option in a Chapter 11 in order to not lose \$700,000 in
27 the Property's equity)

28 As a result, the Debtor was able to save his home and have the time to either reinstate his
loan or convert to a Chapter 11. The estate benefitted by the bankruptcy filing because of the
significant equity in the Debtor's home that was saved.

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2 **IV. CONCLUSION**
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4 As indicated above, in after-hours, emergency consultation, Counsel demonstrated
5 unparalleled professionalism procuring the essential information to act completely in her client's
6 interest. Counsel obtained *de minimus* information to protect Debtor's Property from non-
7 judicial foreclosure and a potential loss of \$700,000 in the Property's equity. Debtor's counsel
8 filed a "skeletal" petition and then followed with the appropriate, diligent research to provide
9 Debtor with all the options the Bankruptcy Code (as well as California non-judicial foreclosure
10 law) provides to him. Counsel undoubtedly provided reasonable value of services.

11 These facts combined with the Chapter 13 Trustee's misapplication of case law to the
12 instant case, compel the Debtor to request the Chapter 13 Trustee withdraw its Motion or, in the
13 alternative, request the Court to deny the Chapter 13 Trustee's Motion for Review and
14 Disgorgement of Attorney's Fees.
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16 Dated: January 9, 2019
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18 /s/ Nancy Weng
19 Nancy Weng, Esq.
20 Attorney for Debtor
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